

**Senator Jim Webb's Floor Speech to Introduce  
"The National Criminal Justice Commission Act of 2009"  
March 26, 2009**

**Note:** To view the data slides used during this presentation, please go to:  
<http://webb.senate.gov/email/incardocs/SlidesCriminalJusticeBill.pdf>

I am pleased today to introduce a piece of legislation designed to establish a National Criminal Justice Commission. I do so with, at the moment, twelve cosponsors, including our Majority Leader, the Chairman and the Ranking Republican on the Senate Judiciary Committee, the Chairman and the Ranking Member of the Judiciary Subcommittee on Crime and Drugs and other members of our leadership.

I introduce this bill after more than two years of effort here in the Senate and with prior conferral with Supreme Court Justice Kennedy and having discussed this matter with the President and the Attorney General, both of whom I think are strongly supportive of this concept.

Our goal in this legislation is to create a national commission with an 18-month timeline not to simply talk about the problems that we have in our criminal justice system, but to actually to look at all of the elements in this system, how they are interrelated in terms of the difficulties that we have in remedying issues of criminal justice in this country and to deliver us from a situation that has evolved over time where we are putting far too many of the wrong people into prison and we are still not feeling safer in our neighborhoods, we're still not putting in prison or bringing to justice those people who are perpetrating violence and criminality as a way of life.

I would like to say that I come to this issue - although I'm not on the Judiciary Committee - as someone who first became interested in criminal justice issues through serving on a number of courts-martial and thinking about the interrelationship between discipline and fairness, and then after that from having spent time as an attorney, at one point representing pro bono a young former Marine who had been convicted of murder in Vietnam. I represented him for six years pro bono. He took his life halfway through this process. I cleared his name three years later but having become painfully aware of how sometimes inequities infect our process.

Prior to joining the Senate, I spent time as a journalist, including a stint 25 years ago as the first American journalist to have been inside the Japanese prison system where I became aware of the systematic difficulties and challenges that we have. At that time, Japan with half our population had only 40,000 sentenced prisoners in jail and we had 580,000 and today we have 2.3 million prisoners in our criminal justice system and another five million involved in the process either due to probation or parole situations.

This is a situation that is very much in need of the right sort of overarching examination. I'm gratified that the Senior Senator from Pennsylvania has joined me as the lead

Republican on this measure. I look forward to hearing from him as soon as I am finished with my remarks.

The third thing that I would like to say at the outset, I believe very strongly even though we are a federal body, that there is a compelling national interest for us to examine this issue and reshape and reform our criminal justice system at the federal, state, and local levels. I believe the commission that I am going to present will provide us with that opportunity.

Let's start with a premise that I don't think a lot of Americans are aware of. We have 5% of the world's population; we have 25% of the world's known prison population. We have an incarceration rate in the United States, the world's greatest democracy, that is five times as high as the average incarceration rate of the rest of the world. There are only two possibilities here: either we have the most evil people on earth living in the United States; or we are doing something dramatically wrong in terms of how we approach the issue of criminal justice.

I would ask my fellow senators and my fellow citizens to think about the challenges that attend these kinds of numbers when we are looking at people who have been released from prison and are reentering American society. We have hundreds and hundreds of thousands of people who are reentering American society without the transition necessary to allow them to again become productive citizens.

I think we need to look at this in terms of our own recent history. This is a chart that shows our incarceration rate from 1925 until today. Beginning in about 1980 our incarceration rate started to skyrocket. What has happened since 1980 is not reflective of where our own history has been on this issue and it is another reason why we need to examine it.

We are also, for a complex set of reasons, warehousing the mentally ill in our prisons. With four times as many mentally ill in our prisons opposed to institutions, the main point for all of us to consider is that these people who are in prison are not receiving the kind of treatment they would need in order to remedy the disabilities that have brought them to that situation.

The elephant in the bedroom in many discussions on the criminal justice system is the sharp increase in drug incarceration over the past three decades. In 1980, we had 41,000 drug offenders in prison; today we have more than 500,000, an increase of 1,200%. The blue disks represent the numbers in 1980; the red disks represent the numbers in 2007 and a significant percentage of those incarcerated are for possession or nonviolent offenses stemming from drug addiction and those sorts of related behavioral issues.

I want to emphasize to my colleagues and to others that the issues that we face with respect to criminal justice are not overall racial issues. In many cases these issues involve people's ability to have proper counsel and other issues, but there are stunning statistics with respect to drugs that we all must come to terms with. African-Americans are about

12% of our population; contrary to a lot of thought and rhetoric, their drug use rate in terms of frequent drug use rate is about the same as all other elements of our society, about 14%. But they end up being 37% of those arrested on drug charges, 59% of those convicted, and 74% of those sentenced to prison by the numbers that have been provided by us.

At the same time, when I say we're putting too many of the wrong people in prison, we're not solving the problems that will bring safety to our communities. Gangs are a hot issue today. I am on the Armed Services Committee, I'm on the Foreign Affairs Committee and there has been a lot of back and forth in recent months about the transnational gangs that are emanating from across the Mexican border. Approximately a million gang members are counted in our country today. I want to emphasize that this is not an issue that simply exists along the Mexican border. This is issue that affects every community in the United States and it is not simply an issue of the Mexican cartels although theirs is the most violent and most visible today. The Mexican drug cartels are operating in 230 American cities, not simply along the border. The incidents on the border illuminate the largeness of this problem and this challenge. Gangs in some areas commit 80% of the crimes and are heavily involved in drug distribution but other violent activities, as well.

There's been some talk over the past few days about how our position toward drugs and our gun policies feed this problem. I would ask my colleagues to think very hard about that. Drugs are a demand problem in the United States. There is no question about that. And there are a lot of weapons going back and forth across the border. But we should remember that the Mexican drug cartels are capable of a very sophisticated level of quasi-military violence. Many of the members in the cartels are former Mexican military, some trained by our own Special Forces and the weapons that they use are not the kind of weapons you buy at a gun show. You don't get automatic weapons, r.p.g.'s and grenades at a gun show.

We have to realize the these cartels have a lot of money. By some indications they make profit levels of about \$25 billion a year. They can buy the weapons they want. We have to get on top of this as a national priority. Again, it's not simply the transnational gangs that come out of Mexico. Many of them are Central American. Here in Northern Virginia we have thousands of members right across the Potomac River, who belong to the MS-13 gangs separating from Central America and there are also Asian gangs. We have to get our arms around this problem as we address mass incarceration in the United States.

Another piece of this issue that I hope we will address with this National Criminal Justice Commission is what happens inside our prisons. When I was looking at the Japanese system many years ago, their model in terms of prison administration was basically designed after a traditional military model. You could not be a warden in a Japanese jail unless you started as a turnkey. They had national examinations, a year of preparation, and training in psychology and counseling techniques, before an individual was allowed to be a turnkey in a jail. The promotion systems were internal just like the United States military. It provided a quality career path. And it brought highly trained people in at the

very beginning. We don't have that in America. Prisons vary warden to warden. They vary locality to locality. We need to examine a better way to do that in our country.

We also have a situation in this country with respect to prison violence and sexual victimization that is off the charts and we must get our arms around this problem. We also have many people in our prisons who are among what are called the criminally ill, many suffering from hepatitis and HIV who are not getting the sorts of treatment they deserve. I started once I arrived in the Senate working on this issue.

I was pleased to be working with Senator Schumer on the Joint Economic Committee. He allowed me to chair hearings to try to get our arms around this problem and see what sort of legislative approach might help. I chaired a hearing on mass incarceration in October of 2007 and I chaired another hearing last year on the overall impact of illegal drugs from point of origin through the criminal justice system; how does this work in terms of the underground business environment; how does it work in terms of the disparity in terms in treatment of those incarcerated; what are the costs associated with it. I was able to work with the George Mason University Law Center to put together a forum bringing people in from across the country to talk about our overall drug policy.

Once we started talking about this particularly over the last year we started being contacted from people all across the country -- people from every different aspect of the political and the philosophical areas that come into play when we talk about incarceration. It is a very emotional issue. I heard from Justice Kennedy of the Supreme Court, from prosecutors, judges, defense lawyers, former offenders, people in prison, and police on the street. All of them are saying we have a mess here - a mess - that we have to get a holistic view of how to solve it.

There are many good pieces of legislation introduced in the Congress to address different pieces of this but after going through this process over the past year, I've come to the conclusion that the way we should address this is with a national commission that will examine all of these pieces together and make specific findings so we can turn it around.

These are just examples of some of the editorial support that we have received. I have written a piece for "Parade" magazine, which will be out this weekend. I hope our fellow citizens will take a look at it. I did as best I can to summarize the challenges that we have.

Now, as to the design of this legislation, we are looking for two things. One is to shape a commission with bipartisan balance -- the President nominating the Leader; the Majority Leader and Minority Leaders of both houses of Congress, in concert with the Judiciary Committees; each being able to appoint two members, and then the National Governors Association, Republican and Democratic, each getting one member.

And the idea, again, is not to have a group of people who are going to sit around and simply remonstrate about the problem, it is to get a group of people with credibility in our country, wide expertise, to examine specific findings and to come up with policy recommendations in an 18-month time period.

The issues that we have put into the legislation are:

What are the reasons in our own history that we've seen this incredible increase in incarceration?

What do other countries do, particularly other countries that have the same basic governmental systems that we do, how do they handle comparable types of crime?

What should we do about prison administration policies and prison management?

How can we bring more quality, stability, and predictability in terms of the prison environment itself?

What are the costs of the current incarceration policies; not only in terms of the billions of dollars that we spend on building prisons or the billions of dollars we spend on housing people in prisons, but in terms of lost opportunities with our post-prison systems and how we can better manage that area?

Also what is the impact of gang activities, including these transnational gangs?

How should we approach that issue, not simply in terms of incarceration, but as a nation that is under duress from not being able to respond properly to these gang activities?

Importantly, what are we going to do about drug policy - the whole area of drug policy in this country?

And how does that affect sentencing procedures and other alternatives that we might look at?

We need to examine the policies as they relate to the mentally ill.

We should look at the historical role of the military when it comes to how we are approaching these cross-border situations, particularly on the Mexican border.

And, importantly -- I want to say this to all of my colleagues -- any other area that the Commission deems relevant.

This is our best effort, after two years, at coming up with a universe that needs to be examined. There are many people, including the Senior Senator from Pennsylvania here on the floor, who have worked on these areas for a number of years, and if they have specific findings that they believe the Commission should review, we are very happy to accommodate that.

The first step for the Commission would be to give us factual findings, and from those findings, the second step would be to give us recommendations for policy changes. The

same areas that I was just addressing in terms of the findings apply in terms of the policy recommendations: how we can refocus our incarceration policies, work toward properly reducing the incarceration rate in fair, cost-effective ways that still protect our communities; how we should address the issue of prison violence in all forms; how we can improve prison administration; how we can establish meaningful re-entry programs.

I believe that with the high volume of people who are coming out of prisons, we must, on a national level, assist local and state communities in figuring out a way to transition these people so that those former offenders who are not going to become recidivists will have a true pathway to get away from the stigma of incarceration and move into a productive future.

Again, importantly, the last category: any other aspect of the system that the Commission or the people participating in it determine necessary. This is our approach. I am very gratified to have had as initial cosponsors on this legislation six members of the Senate Judiciary Committee, including, as I mentioned, the Chairman, Senator Leahy; the Ranking Republican, Senator Specter; the Chairman of the Subcommittee on Crime and Drugs, Senator Durbin; the Ranking Republican on that Subcommittee, Senator Graham; and a number of others, including our key Democratic leadership, most importantly our Leader. I would hope that we can get this legislation done this year. This is an issue that doesn't percolate up in the same way. It doesn't have a programmatic element to it, in many cases, but it is an issue that threatens every community in the United States and begs for the notion of fairness.

With that, I see that the Senior Senator from Pennsylvania is on the Floor. I want to say how greatly I admire the work that he has done in this area over many, many years and how much I appreciate his support on this endeavor.

I would like to express my appreciation to the Senior Senator from Pennsylvania for joining me on this legislation and in this endeavor, because it will be an endeavor, as the Senator knows, well beyond the legislative approval of the Commission. I would think this is going to take years. But I would like to express my appreciation for that, for his comments today and for all the work he's done in this field.

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I would just like to emphasize a couple of things in reaction to what the Senator [Arlen Specter] mentioned. I do believe we can meaningfully address this problem. A solution is perhaps a more elusive word but we can certainly meaningfully address this problem. I think it's very important to say that it is in the interest of every American that we do so.

There are a lot of people who will look at this and talk about specific elements of who has committed a crime and whether you should do the time and these sorts of things, but we really need to sort it out.

When we have 5% of the world's population and 25% of the world's prison population, there are better ways. When we still have public safety issues in every community

because of gang violence, and particularly transnational gang violence at this moment, there are better ways. That is the purpose of having a commission, getting the greatest minds in this area in the country together with a specific timeline to bring us specific findings and recommendations for the entire gamut of criminal justice in this country. Not simply incarceration, not simply gang violence, not simply reentry, but all of those and others together so that we can have a much-needed and long overdue restructuring of how we address the issue of crime in this country.